

Definitions

Addendum: An addition, change, or supplement to a solicitation document issued prior to the opening date.

Advertise: To make a public announcement of the intention to purchase goods or services.

Agency: Any state department, office, institution, board or commission.

Amended: A status change to an RFP, IFB, RFO, RFI, RFQ or Contract that indicates a modification to that document.

Amendment: Written addition or change to a contract.

Appropriation: Legislative authorization to expend public funds for a specific purpose.

Assignment: Transfer of contractual rights from one party to another party.

Best Value: Factors to be considered in determining lowest overall cost and value in making certain purchases. Ref. Texas Government Code, Section 2155.074 (Non-Information Technology Related) and Texas Government Code, Section 2157.003 (Information Technology Related).

Bid: An offer to contract with the state, submitted in response to a bid invitation. Bids are usually non-negotiable.

Bid Deposit: A deposit required of bidders to protect the state in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the state. Acceptable forms of bid deposits are limited to: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas and entered on the United States Department of the Treasury's listing of approved sureties; a surety or blanket bond from a company chartered or authorized to do business in Texas.

Bid Opening: The public opening of bids, in which the names of the bidders responding to a bid solicitation and prices of the bidders are publicly read and recorded. See Proposal Opening.

Bid Tabulation: The recording of bids and bid data submitted in response to a solicitation. The bid tabulation is used for comparison, analysis and record keeping.

Bidder: An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees and representatives.

Bidders List: A list of potential contractors who have expressed an interest in doing business with the State of Texas. See Centralized Master Bidders List.

Biennium: The two (2) year period in which the Texas Legislature appropriates funds. The biennium begins on September 1st of odd numbered years.

Bond: Note or other form of evidence of obligation issued in temporary or definitive form, including a note issued in anticipation of the issuance of a bond and renewal note.

Change Order: A document which is used when it becomes necessary that amends, clarifies, changes, or cancels contract issues and/or provisions.

Centralized Master Bidders List (CMBL): The CMBL is a list maintained by the Texas Comptroller of Public Accounts (CPA) containing the names and addresses of prospective bidders and catalog information systems vendors.

Competitive Sealed Bidding: Process of advertising an invitation for bids (IFB), conducting a public bid opening and awarding of a purchase order/contract to the lowest responsive, responsible bidder in accordance with state law.

Competitive Sealed Proposals: Process of advertising a request for proposal (RFP), the evaluation of submitted proposals and awarding of the contract.

Consultant: A person that provides or proposes to provide a consulting service.

Consulting Services: Practice of studying and advising a state agency in a manner not involving the traditional employer/employee relationship per Texas Government Code, Section 2254.021 (See Major Consulting Services Contract).

Contract: A written agreement where a contractor provides goods or services and the agency pays for such goods and services in accordance with the established price, terms and conditions.

Contract Administration: This generally refers to the processes that occur after a contract is signed and is explained in detail in Chapter 7.

Contract Advisory Team (CAT): The team created to assist agencies in improving contract management practices. The team consists of four (4) members, one from each of the following offices: 1) Office of the Attorney General, 2) Comptroller of Public Accounts, 3) Department of Information Resources, and 4) Office of the Governor per Texas Government Code, Section 2262.101.

Contract Management: This refers to the entire contracting process from planning through contract administration.

Contract Manager: A person who is: 1) employed by a state agency, 2) has significant contract management duties for the state agency as determined by the agency in consultation with the Texas Comptroller of Public Accounts referenced in Texas Government Code, Section 2155.078, and the Commission's rule 113.

Contractor: A business entity or individual that has a contract to provide goods or services to the State of Texas. Used interchangeably with the term “vendor”.

Deliverable: A unit or increment of work required by the contract, including such items as goods, services, reports, or documents.

Electronic State Business Daily: The electronic marketplace where State of Texas bid opportunities over \$25,000 are posted. See Procurement Manual (<http://www.window.state.tx.us/procurement/pub/manual/>).

Emergency: A purchase made when unforeseen and/or a sudden unexpected occurrence creates a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

Executive Sponsor: A high level individual with primary responsibility for implementation and operation of the project. In some instances, the executive sponsor may be the executive head of the agency. In other instances, the executive sponsor may be the division or program director with overall project responsibility.

Goods: A transportable article of trade or commerce that can be bartered or sold. Goods do not include services or real property.

Grant: The term “grant” is found in two distinct situations involving a state agency: where an agency provides grants to other entities and where an agency uses grant funds for procurements. In the first situation, a state agency is responsible for awarding grant funds to other entities such as other state agencies, local governments, non-profit organizations or private entities, with the state agency as the grantor agency; those other entities are the grant applicants. In the second situation, a state agency has received grant funds and is using those funds to make a procurement for that agency. The grants section at the end of each chapter in the guide is addressing the first situation – the state agency as grantor of funds. When an agency is using grant funds to make a procurement of goods or services (the second situation above), the agency shall comply with the procurement provisions of the guide. When a chapter “grants” section provides guidance on a particular matter, that guidance prevails over guidance addressing the same matter in the procurement sections of the Guide, including this Definitions Section of the Introduction to the Guide. As used in the first situation, the term “grant” refers to an award of financial assistance, including cooperative agreements, in the form of money, equipment, supplies, or other resources paid or furnished by the state or federal government to carry out a program in accordance with the terms of the grant award and all applicable state and federal laws, rules, and regulations.

Historically Underutilized Business: A minority or women-owned business as defined by Texas Government Code, Title 10, Subtitle D, Chapter 2161. (<http://www.window.state.tx.us/procurement/prog/hub/>).

Independent Contractor: A person working for an entity under contract and not an employee of the contracting entity. The contracting entity does not pay unemployment, disability, or worker’s compensation insurance or withholding taxes from payments to the person. An independent contractor normally follows the contracting agency’s direction on the results of the work but not on the means of accomplishing the work.

Invitation for Bids (IFB): Procurement process used when the requirements are clearly defined, negotiations are not necessary and price is the major determining factor for selection. The IFB uses the competitive sealed bid method.

Liquidated Damages: A specified contract provision which entitles the state to demand a set monetary amount determined to be a fair and equitable repayment to the state for loss of service due to vendor's failure to meet contract requirements.

Major Consulting Services Contract: A consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000.

Major Contract: A contract that has a value of at least one (1) million dollars during the original term of the contract, not including any renewal periods.

Negotiations: A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. In a contractual sense, negotiation means the "dealings conducted between two or more parties for the purpose of reaching an understanding."ⁱ

Opening Date: The day and time, after submission of proposals, when sealed bid responses are opened.

Payment Bond: A bond executed in connection with a contract which secures the payment requirements of the contractor.

Performance Bond: A surety bond which provides assurance of a bidder's performance of a certain contract. The amount for the performance bond shall be based on the bidder's annual level of potential monetary volume in the state purchasing program. Acceptable forms of bonds are those described in the definition for "bid deposit."

Posted Date: The date a procurement document is made available to the public.

Professional Services: Services directly related to professional practices as defined by the Professional Services Procurement Act (Government Code, Section 2254.002) or services authorized by rule by the Department of State Health Services pursuant to Health and Safety Code, Section 12.0121. These include services within the scope of the practice of: accounting; architecture; optometry; medicine; land surveying; and professional engineering. Services provided by professionals outside the scope of their profession, e.g., management consulting services provided by accounting firms, are not considered professional services.

Proposal: An executed offer submitted by a respondent in response to a Request for Proposals (RFP) and intended to be used as a basis to negotiate a contract award.

Proposal Opening: The public opening of proposals, in which the names of the respondents to a solicitation are publicly read and recorded. No prices are divulged at a proposal opening as these types of solicitations are subject to negotiation. See Bid Opening and the Procurement Manual.

Proprietary Purchase: A purchase request of a product that is proprietary to one vendor and does not permit an equivalent product to be supplied as defined in Texas Government Code, Section 2255.067.

Purchasing Department: The office designated to purchase goods and services for a state agency.

Renewal: When an existing contract is renewed for an additional time period in accordance with the terms and conditions of the original contract.

Request for Information (RFI): A general invitation to contractors requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

Request for Offer (RFO): A solicitation for automated information systems (which may include a request for hardware, software and other information technology goods and services) requesting the submittal of an offer in response to the required scope of services, including a cost proposal. Negotiations are allowed between a proposer and the issuing agency.

Request for Proposal (RFP): A solicitation requesting submittal of a proposal in response to the required scope of services and usually includes some form of a cost proposal. The RFP process allows for negotiations between a proposer and the issuing agency.

Request for Qualifications (RFQ): A solicitation document requesting submittal of qualifications or specialized expertise in response to the scope of services required. No pricing is solicited with an RFQ.

Request for Quote (RFQ): An informal solicitation document requesting pricing on small dollar purchases.

Responsive: The respondent has complied with all material aspects of the solicitation document, including submission of all required documents.

Respondent: An entity submitting a proposal in response to a solicitation. (See Bidder)

Responsible: The respondent has the capability to fully perform and deliver in accordance with the contract requirements. The agency may include past performance, financial capabilities and business management as criteria for determining if a bidder or proposer is capable of satisfying the contract requirements.

Service: The furnishing of labor by a contractor which may not include the delivery of a tangible end product. In some cases, services and goods may be combined such as film processing. In these instances, agencies determine whether labor or goods is the primary factor. In the case of film processing, the labor to process the film is the primary factor, therefore film processing is considered a service.

Solicitation: A document requesting submittal of bids or proposals for goods or services in accordance with the advertised specifications.

Solicitation Conference: A meeting chaired by state agency personnel which is designed to help potential bidders/respondents understand the requirements of a solicitation. Also known as a pre-bid or proposal conference.

Specification: Any description of the physical or functional characteristics or of the nature of supplies or service to be purchased. It may include a description of any requirements for inspecting, testing, or preparing supplies or services for delivery.

State: The State of Texas.

State Agency: An agency of the State of Texas as defined in Texas Government Code, Section 2056.001.ⁱⁱ

Statewide Contract: A legal and binding instrument between the state and a vendor(s) which is made available to multiple state agencies to purchase frequently used commodities and services. State agencies are required to use these contracts, which are competitively bid, awarded, and maintained by the appropriate procurement agency.

Statute: A law enacted by a legislature.

Strategic Sourcing: A concept of purchasing with the objective to purchase goods or services that will minimize costs, increase managerial effectiveness and improve operational efficiency.

Sub-recipient: A non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency.

Surety: A person or entity providing a bond to a contractor to indemnify the State against all direct and consequential damages suffered by failure of the contractor to perform the contract and to pay all lawful claims of subcontractors, materials suppliers and laborers as applicable.

Term Contract: A Contract that addresses the estimated requirements for a number of agencies for supplies or services that are used repeatedly or in significant quantities over a period of time. Agencies place orders directly with term contract vendors for the quantity needed.

Vendor: A business entity or individual that has a contract to provide goods or services to the State of Texas. Used interchangeably with the term “contractor.”

ⁱ Black’s Law Dictionary (7th ed. 1999).

ⁱⁱ State agency means a department, board, commission or other entity of state government, other than a university system or an institution of higher education as defined by Section 61.003, Education Code, that:

- 1) has authority that is not limited to a geographical portion of the state;
- 2) was created by the constitution or a state statute with an ongoing mission and responsibilities;
- 3) is not the office of the governor or lieutenant governor;
- 4) is not within the judicial or legislative branch of government; and
- 5) is not a committee created under state law whose primary function is to advise an agency.